

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:

CARL MENEFEE,

Complainant,

and

CITY OF ZION,

Respondent.

Charge No. 2004CA2865

EEOC No. 21BA51641

ALS No. 07-457

ORDER

This matter coming before the Commission pursuant to a Recommended Order and Decision, the Complainant's Exceptions filed thereto, and the Respondent's Response to the Complainant's Exceptions.

The Illinois Department of Human Rights is an additional statutory party that has conducted state action in this matter. They are named herein as an additional party of record. The Illinois Department of Human Rights did not participate in the Commission's consideration of this matter.

IT IS HEREBY ORDERED:

1. Pursuant to 775 ILCS 5/8A-103(E)(1) & (3), the Commission has **DECLINED** further review in the above-captioned matter. The parties are hereby notified that the Administrative Law Judge's Recommended Order and Decision, entered on **January 15, 2010**, has become the Order of the Commission.

STATE OF ILLINOIS)

HUMAN RIGHTS COMMISSION)

Entered this 28th day of April 2010

Commissioner Sakhawat Hussain

Commissioner Spencer Leak, Sr.

Commissioner Rozanne Ronen

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RECOMMENDED ORDER AND DECISION

This matter is before me on Respondent's motion to dismiss, filed October 17, 2008.

Complainant filed a response to the motion on October 30, 2008. Respondent filed a reply on January 5, 2009.

The record indicates the motion has been served upon all parties and the Illinois Department of Human Rights (Department). The Department is an additional statutory agency that has issued state actions in this matter. It is therefore named herein as an additional party of record.

FINDINGS OF FACT

The following findings of fact were made from the record in this case.

1. Complainant filed a Charge of Discrimination with the Department on March 24, 2005. The Department, on behalf of Complainant, filed a Complaint with the Illinois Human Rights Commission (Commission) on June 20, 2007, alleging that Respondent discriminated against Complainant in violation of the Illinois Human Rights Act (Act), 775 ILCS 5/1-101 *et seq.* The Complaint alleges that Respondent discriminated against Complainant on the basis of his race when it failed to hire him for the position of Assistant Director of Finance in April, 2005.
2. Respondent filed a verified answer and affirmative defenses to the Complaint on August 20, 2007.

3. On January 14, 2008, Respondent filed notice with the Commission that it issued a subpoena for documents to a non-party.
4. Respondent served *Respondent's First Request for Admissions from Complainant* on March 10, 2008. Complainant did not admit nor deny the requests and, instead, objected to all requests on March 12, 2008.
5. On May 5, 2008, Respondent filed a motion to deem the requests to admit admitted or, in the alternative, to compel Complainant to answer the requests. Complainant filed a response to the motion on May 14, 2008. Also on May 14, 2008, Complainant filed a motion to quash Respondent's third-party subpoenaed documents. An order issued on July 11, 2008 ordering Complainant to answer all requests to admit no later than September 12, 2008, and further denying Complainant's motion to quash.
6. On August 14, 2008, Complainant served answers to Respondent's requests to admit asserting his Fifth Amendment privilege against self-incrimination as to all nine requests.
7. The answers to the requests to admit may substantially aid Respondent's defense or even establish a complete defense.

CONCLUSIONS OF LAW

1. It is unjust to allow a Complainant to prosecute his cause of action and, at the same time, refuse to answer questions by asserting the Fifth Amendment privilege when such answers may substantially aid defendants or even establish a complete defense.
Galante v. Steel City National Bank of Chicago, 66 Ill.App.3d 476, 482, 384 N.E.2d 57 (1st Dist. 1978).
2. A plaintiff in a civil action who exercises his privilege against self-incrimination to refuse to answer questions pertinent to the issues involved will have his complaint dismissed upon timely motion. *Galante*, 66 Ill.App.3d at 482, citing to *Kisting v. Westchester Fire Insurance Co.*, 290 F. Supp 141, 149, (D.C. Wis., 1968), *aff'd* 416 F.2d 967 (7th Cir. 1969).

DETERMINATION

This case should be dismissed because Complainant has refused to answer Respondent's requests to admit, invoking his Fifth Amendment privilege, which answers may substantially aid Respondent's defense or even establish a complete defense.

DISCUSSION

Complainant filed a Charge of Discrimination with the Department on March 24, 2005. The Department, on behalf of Complainant, filed a Complaint with the Illinois Human Rights Commission (Commission) on June 20, 2007, alleging that Respondent discriminated against Complainant in violation of the Illinois Human Rights Act (Act), 775 ILCS 5/1-101 *et seq.*

Complainant alleged that Respondent discriminated against him on the basis of his race when it failed to hire him for the position of Assistant Director of Finance in April, 2005. Respondent filed a verified answer and affirmative defenses to the Complaint on August 20, 2007.

Respondent served its *First Request for Admissions from Complainant* on March 10, 2008. Complainant did not admit nor deny the requests and, instead, objected to all requests on March 12, 2008. On May 5, 2008, Respondent filed a motion to deem the requests to admit admitted or, in the alternative, to compel Complainant to answer the requests. Complainant filed a response to the motion on May 14, 2008. Also on May 14, 2008, Complainant filed a motion to quash Respondent's third-party subpoenaed documents. An order issued on July 11, 2008, ordering Complainant to answer all requests to admit no later than September 12, 2008, and further denying Complainant's motion to quash.

On August 14, 2008, Complainant served answers to Respondent's requests to admit, asserting his Fifth Amendment privilege against self-incrimination as to all nine requests. Respondent filed the instant motion to dismiss based on Complainant's refusal to answer its requests.

In support of its motion, Respondent cites *Kisting v. Westchester Fire Insurance Co.*, 290 F. Supp. 141, 149 (W.D. Wis 1968), *aff'd.*, 416 F.2d 967 (7th Cir. 1969), for the proposition that a complainant, by commencing an action, may not assert a Fifth Amendment privilege both to prosecute his case and protect himself against self-incrimination.

In his response, Complainant first argues that Respondent's motion to dismiss was untimely filed in accordance with Commission rules at Section 5300.640(b). Complainant's argument lacks merit, as Section 5300.640(b) applies to the time of filing an answer to the Complaint and has no bearing on the motion here. Complainant next contends that the subject of Respondent's requests to admit were not relevant to Complainant's claims of race discrimination. Complainant submits no legal argument for this contention; thus, this contention also lacks merit. Moreover, Complainant's objections to the requests were based on his assertion of his Fifth Amendment rights and were not based on relevance.

Turning to the issue before me, I find the decision in *Galante v. Steel City National Bank of Chicago*, 66 Ill.App.3d 476, 482, 384 N.E.2d 57, 23 Ill. Dec. 421 (1st Dist. 1978) controlling. In *Galante*, the state appellate court affirmed the trial court's decision dismissing the complaint, saying that "[a]lthough it is true that plaintiffs cannot be forced to involuntarily incriminate themselves, we do not believe they should be permitted to use the Fifth Amendment privilege as both a shield of protection and a sword of attack. Plaintiffs have forced defendants into court. It would be unjust to allow them to prosecute their cause of action and, at the same time, refuse to answer questions, the answers to which may substantially aid defendants or even establish a complete defense." *Galante*, 66 Ill.App.3d 476 at 482.

More recently, the Commission addressed this issue. In *Carranza and Evanston Northwestern Healthcare*, IHRC, ALS No. 05-247, Sept 4, 2007, the complainant invoked his Fifth Amendment privilege in refusing to answer requests to admit related to name aliases he may have previously used. Following the *Galante* analysis, the Commission affirmed the dismissal of the case, stating that dismissal is appropriate when complainant's refusal to waive

his Fifth Amendment privilege deprives respondent of information vital to build a complete defense.

Here, Respondent's requests to admit generally seek to have Complainant admit or deny that he has used other names or aliases or other birthdates. Other requests inquire as to whether Complainant had been previously convicted or imprisoned for various criminal activities. It cannot be said that answers to these requests are not relevant or cannot lead to relevant information bearing on Respondent's defense of this claim. Complainant cannot proceed to prosecute this claim while attempting to hamstring Respondent's ability to defend itself.

RECOMMENDATION

Based on the foregoing, I recommend that this Complaint and the underlying charge of discrimination be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

ENTERED: January 15, 2010

SABRINA M. PATCH
Administrative Law Judge
Administrative Law Section